

Senate Education Committee

TO: Senator Florence Shapiro, Chair, Education Committee

Senator Kip Averitt
Senator Steve Ogden
Senator Dan Patrick
Senator Leticia Van de Putte
Senator Royce West
Senator Tommy Williams
Senator Judith Zaffirini

Hello, My name is Mara LaViola and I am deeply appreciative of this opportunity to speak before this committee. I am the parent of two children in special education in Texas. My oldest was a High School Senior this year who just graduated several weeks ago and will be going off to college at the end of the summer. My youngest, who is five, had a stroke, has Autism, Cerebral Palsy and other significant challenges. As a result of the journey our family has undertaken as a result of these two beautiful children, I feel that I do have some valuable insight to share with this committee and I appreciate this opportunity to do so.

First, let me begin by saying that I do feel that what I say might resonate with some dissonance with some of you simply by virtue of the charge of this committee with respect to special education. As I read it, the charge has something inherently wrong with it. The charge incorrectly assumes that the special education system, as it currently exists in the state of Texas, is operating at some level of competency and effectiveness and because we are merely focusing on transition issues, implies that the system merely needs some intense focus or some tweaking in certain areas. The underlying assumption, however, is that the system is operating. I came all the way here today to tell this committee that there is nothing further from the truth. The educational system, particularly as it applies to children with special needs in special education, is completely and utterly broken. Special Education in Texas has such systemic failures that are designed to inhibit the implementation of IDEA 2004, rather than promote its obligations and protections. Special Education wholly fails, for most children, to operate as it should to provide an appropriate education to “meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent possible.” (Section 1400(c)(5)(A)).

Related Services:

I know that I will be following a lot of other people who are far more articulate than myself, so I will attempt to be brief and only highlight items perhaps not touched upon by the testimony of others. Consequently, I would like to begin with the federal requirement of the delivery of Related Services, such as occupational, speech, physical therapies, social groups, leisure training etc....As far as I am concerned, Related Services are the crux of an individualized educational program that are specifically designed to ameliorate the challenges that are holding back many of our children in the state of Texas. Most school districts, through the ingenuity of their attorneys, have somehow created a mistaken assumption among employees and parents alike that somehow these vital services are some kind of bonus that you may be lucky to receive if you push hard enough. Nothing can be further from the truth, related services, more often than not, are the vital components of an individualized education program that can either insure success if given in the frequency and duration needed to ameliorate challenges, but if not provided, can be the sole reason why the vast majority of children do not achieve the level of success needed for independent living.

There was a study conducted fairly recently, and I will provide it shortly, that demonstrates that even among those few individuals that graduate college who are on the Autism Spectrum, only about 2% are able to live independently. This demonstrates just how essential related services are for insuring successful outcomes for our children. As we all know, many of our children can succeed in a classroom setting, but it is the social components, or the motor planning components of the disorder that are holding them back and not being adequately addressed. But the truth is, related services are designed to address these very core deficits of Autism – relating and communicating, motor planning and ideation – that can really determine the difference between success and failure. IDEA 2004, puts to rest any prior claims, that success in educational outcomes alone is the only criteria to which we hold schools accountable and that children's developmental goals must be addressed – and principally, this is done through the delivery of Related Services.

So, how are Texas schools getting away with not providing these services. I believe the issue is threefold: First, moving service delivery to a consultative basis rather than an individual basis; second, and very much related to the first is that districts are telling parents that they are now instituting an integrative approach to the delivery of these services and; third; school districts, through the ingenuity once again of their lawyers and the complicity of TEA, have been successful at disseminating erroneous legal standards.

Let me touch on these briefly: First, moving service delivery to a consultative basis means that districts are no longer providing individualized services but

rather relying on the classroom teacher to seize opportunities through out the day to provide isolated and brief opportunities to work on a particular skill. This has so many problems I do not even know where to begin. First, it is placing policy over individual need, in complete contradiction to federal law. Furthermore, this assumes that effective therapy can be delivered in brief, isolated and inconsistent timeframes to improve developmental progress that often times is delayed by years rather than months. Any reasonable person knows that this makes absolutely no inherent sense. In addition, it addresses only isolated skills rather than improving the actual deficit. For example, focusing on correct pencil grip during table time opportunities without direct services that focus on the development of core strength, which is the essential prerequisite for holding writing utensils correctly and maintaining proper posture to sit for extended periods of time at a desk.

Second, is this idea of “integrating” services. Districts are telling parents that they are instituting an integrative approach rather than delivering services directly and in sufficient frequencies and duration. Integrating these services for the purposes of consistency, practice and reinforcement is good policy, utilizing integration as a means to ameliorate challenges is a fallacy and in direct contradiction to the individualized approach required under federal law and once again, placing policy over individual need. In addition, by utilizing this approach combined with the first one, teachers are now becoming responsible for academic goals, occupational therapy goals, physical therapy goals, speech therapy goals etc... This requires that the classroom teacher be provided appropriate training to deliver these services, develop the expertise to successfully integrate them, and be able to do so effectively with case loads of over 20 children in many cases. No matter how talented the teacher, I do not believe that there is a single teacher who can do this effectively given the numbers of students in their classrooms and the level of training it requires.

Third, and most importantly, is how school districts are getting away with this in this state. The few large firms that represent the vast majority of school districts in Texas have been quite adept at promulgating erroneous legal standards and then effectively disseminating them with the complicity of TEA. The wholly erroneous standard of “medical need vs. educational need” is all too often imposed on children to deny much needed related services. Another related and equally erroneous standard applied is “academic verses developmental need.” Whereby schools repeatedly deny services that children need based on their assertion that they are only responsible for academic/education needs rather than developmental need or that there needs are “medical” in nature and, therefore, not the district’s responsibility. IDEA 2004 is absolutely clear that these standards have no merit yet children each and every day are denied much needed services based on their imposition. When you read the Findings and Purposes of IDEA 2004, you will see that Congress raised the bar for a free appropriate public education (FAPE).

In “Findings” of IDEA 2004 (Section 1400(c)), Congress found that “30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children,” educating them in the regular classroom so they can “**meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent possible.**” (Section 1400(c)(5)(A))

In “Purposes” of IDEA 2004 (Section 1400(d)), Congress describes what they intend the law to accomplish. In IDEA 2004, Congress added “further education” as a purpose of the law: “The purposes of this title are to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education **and related services designed to meet their unique needs and prepare them for further education, employment and independent living.**” (Section 1400(d)(1)(A)).

I can speak with conviction on all the above because it has happened to me. Here is just one example among far too many. My son who is 2.5 years behind developmentally in gross and fine motor abilities did not qualify for occupational therapy in my school district and only qualified to receive 10 minutes of physical therapy every other week. My district gave me all three of the arguments advanced above and, nevertheless, assured me that my son would make meaningful progress in these areas.

How could this happen, you might ask as this child is more than two years behind developmentally. Well, this leads me to several other concerns that need to be addressed with respect to related services and which may be the biggest problem of all. How did these erroneous standards get so entrenched and how do we remedy the problem. Simply, these effective strategies to deny services began in the law offices of the few large firms in the state that represent school districts as a way to help district’s save money by denying federally mandated services. Then TEA, through its Regional service centers, hires these large firms to dispense parent training and related service providers training as to the legal parameters to be applied. This hiring of school district attorneys by TEA to provide trainings comes with it the inherent assumption that these firms are dispensing legitimate legal advice, legitimate legal parameters, and working collaboratively with both the district’s and parents to insure that children are receiving FAPE in LRE’s with appropriate related services. Nothing could be further from the truth. Furthermore, this collusion between TEA and School District attorneys has resulted in what I call a “poisoned pool” of related services providers who are misinformed as to their obligation with respect to evaluations and recommendations.

After three years of fictitious “functional” evaluations from my school district, I finally was able to get my school district to agree to an Independent Educational

Evaluation (even this term is misleading) yet it took me almost a full year to find independent related service providers to conduct the evaluations because they all had been misinformed that this evaluation to establish need, present levels of performance etc was somehow different than an assessment that a parent would ordinarily obtain in a private setting and, consequently, the recommendations for services are tainted because of this mistaken belief system they have been taught as a result of the collusion between TEA and these law firms. (Collusion that I believe is worthy of investigation – these law firms are paid through public tax dollars and they should have an obligation to seek truth, serve the children, and not help school district's deny services...something has to be done. I would urge this committee to look into this situation. I believe these law firms have a fiduciary obligation to seek truth, not save schools dollars, when they are being paid through tax payer money. In N.Y., the Attorney General is now launching a major investigation into the major law firms that represent school district's in that state for a variety of offences, I suspect similar situations exist here in Texas.)

So confronted with all of this, I began to ask myself, how can we resolve this and how can I effectively advocate for the services my child so desperately needs. While researching I came across objective criteria for the delivery of related services in the states of New York and New Jersey. When I called TEA and did the research myself, I found that TEA and the state of Texas has absolutely no objective criteria that districts, parents and ARD committees can utilize to determine the delivery of these services in terms of frequency and duration, once need has been established. Consequently, children are subject to ad hoc policies, biased notions of ARD committees unduly influenced by recalcitrant administrators and school boards or the cost saving motives of the attorney's who represent the districts. Other states have objective criteria to determine, for example, how much occupational therapy is needed per week in order to achieve meaningful progress.

I believe that if this committee could legislate objective criteria as other states have done, this would eliminate the school district's ability to continue the present tactic of denying related services based either on absurd delivery models outlined above or fictitious legal standards designed to limit the delivery of these vital services. . This would help parents and related service providers adequately advocate for these services for children without having to fight the roadblocks mentioned above.

Statute of Limitations:

The Statute of Limitations desperately needs to be addressed. The present statute of limitations of one year is unconscionable. IDEA is a collaborative statute and it takes time to institute when working with reluctant and intractable school districts – the one year statute of limitations only enables schools to do what they continue to do so well, delay deny and delay and deny and, thereby, denying parents legal recourse as they try to negotiate and be the collaborative

parent attempting to avoid litigation. The one year statute of limitations that currently exists in this state only serves to perpetuate the cycle of delay and deny that school districts have become all too adept at and willingly utilize to their advantage each and every day, very much to the detriment of our children. District's knowingly and effectively string parents along with more ARD meetings, more evaluations, more investigations etc...and the parent that attempts to act in good faith and collaborate with the school district is all too often left without any legal recourse because they have run out of time. I strongly urge this committee to, at a minimum; align our state statute of limitations with the federal one of two years so that the playing field in which parents are operating under can be equalized to a degree. Currently, the one year statute of limitations only serves to protect school district's unwillingly to abide by IDEA.

Due Process Proceedings:

Due Process must be removed from the auspices of the Texas Education Agency. The Texas Education Agency has wholly failed our children with special education and the agencies continued collusion with the large law firms representing school districts as well as their relationship with the hearing offices taints the whole process and continuously denies FAPE to our children. I will not go into this too much, as others are going to do so. I will simply say that our children deserve better than the system that currently exists in this state.

Access to school boards and decision/policy makers:

Obtaining access to the school board, the policy makers and decision makers, in school districts is often times nonexistent. I believe it is vitally important for this committee to legislate that District Improvement Task Forces must have representation of various disabilities so the needs and concerns of this special population can be heard and addressed in the context of the local school districts. In my school district, which is a large district in Senator Shapiro's district, special education children have absolutely no access to the school board and appropriate administrators. The two committees that report directly to the school board, the District Improvement Team and the Diversity Task force, have absolutely no representation of special education students. To make matters worse, the Assistant Superintendent responsible for special education has no educational degree associated with special education and lists absolutely no professional affiliations with special needs groups on her published resume. At the recommendation of OSEP and Region 10, I approached the school board during the public input session of a school board meeting in order to address, broadly, my concerns with special education in our district for example, a lack of a true continuum of alternative placements, preschool LRE and ratio, related services being dispensed on a consultative basis only etc...After my address, I received an e-mail from the superintendent of the district informing me that the public input session of the board meeting was not the appropriate forum to address the concerns, refusing to discuss my concerns with me and directing me

only to the due process complaint strategy if I wanted to be heard. The Superintendent copied each and every board member as well as all administrators responsible for special education children. Thereby, effectively and efficiently eliminating any discourse to address concerns of special needs parents other than litigation. Consequently, special education parents in our district have absolutely no way to get their concerns heard and discussed. This is unacceptable, I would say in violation of IDEA, ADA and section 1983, but more importantly, demonstrates the need to legislate mandatory access on school board committees so these issues can be addressed without having to resort to costly and timely litigation, that typically results in closed settlement agreements, thereby allowing districts to continue the course most currently do: to delay and deny.

District Improvement task forces are a requirement of TEC section 11.251 which states that:

§ 11.251. PLANNING AND DECISION-MAKING PROCESS.

(a) The board of trustees of each independent school district shall ensure that a district improvement plan and improvement plans for each campus are developed, reviewed, and revised annually for the purpose of improving the performance of all students.

Apparently, in my school district and many others, “all students” still does not include students with special needs. I urge this committee to draft legislation to address this issue directly and mandate that special education children be effectively represented on these committees and that this representation reflect the same level of diversity and complexity that typically developing children are represented at on these committees – in terms of various abilities, ages, specific condition, etc...

Legislate a definition of “academic benefit”:

Legislate a definition of academic benefit so that parents will not have to resort to courts to do what IDEA 2004 has already done, align the lofty goals of No Child Left Behind with IDEA. The *Rowley* standard of “some educational benefit” being applied by many federal circuits around the country, the fifth circuit included, is no longer applicable and Congress has made that abundantly clear in its unambiguous language throughout the new IDEA statute and its accompanying regulations. A tremendous service would be done for all children in special education if this new standard of maximizing potential that is stated throughout IDEA 2004 is legislated at the state level and made abundantly clear, as I have little doubt that due process hearing officers or the fifth circuit is going to do so easily on their own. By Legislating a legal definition of academic benefit the children in this state will not have to wait for that one parent who can financially and emotionally afford the long journey to litigate this out in the courts.

If we could legislate such a definition, then more children can get the help they need in a far more expeditious manner. What the last decade has proven, with Autism in particular, that these children are capable of tremendous progress when the right intervention strategies are implemented with the sufficient intensity and frequency.

Committee reliance on data provided from TEA:

Although I completely understand the need to rely on data in order for effective decision making, I am concerned about the committee's reliance on data from TEA in order to determine parents' satisfaction with the special education system in Texas. Relying on how many complaints or due process proceedings have been initiated assumes too many false suppositions; First, that parents are aware of the complaint and/or due process proceedings, Secondly, that parents of special education students have the time and resources (both economic and emotional) to pursue these processes, and third, that they have enough confidence in the system and the process to pursue the complaint or due process proceedings. I wholeheartedly believe that these three assumptions are inaccurate and, therefore, relying on the number of complaints or due process initiations in order to assess satisfaction is not an accurate indicator of parental satisfaction.

Collective outcry transcending party lines:

I believe that Senator Zaffirini recently sent a request to our governor and State Board of Education Commissioner requesting that they seek assistance from the federal government, OSEP in particular, and seek out several grants and training opportunities offered by the Department of Education. I sent a letter to both the governor and commissioner in support of this request and received a letter from both asserting that they believed that it was unnecessary as the State of Texas had the requisite knowledge to improve their system and that the system in place in Texas was adequately meeting the needs of children. Well, last week I believe OSEP once again downgraded the State of Texas when it assessed how well special education programming was being conducted in the state of Texas. I would hope that now that OSEP has down graded Texas, particularly in light of the fact that Easter Seals has listed Texas as the 50th out of 51 states (district of Columbia is included) as the worst provider of services for special needs children, this committee would collectively and publicly call both the governor and the commissioner to task for repeatedly refusing to seek assistance and grant money from the federal government and to TEA for failing our children miserably.

A collective and public outcry is needed by this committee to insure that something gets done and the children of this state start receiving the educational services that they are legally entitled to. We have a 10 billion dollar surplus in this state and yet our school district's are tightening budgets, cutting programs and denying services that are vitally needed. It is inexcusable that our state is not

providing a free and appropriate education to all our children in a manner that fosters independent living and post-secondary opportunities for all children. We need a stronger, collective public outcry and response than what we have currently received and I believe it is up to this committee to lead the way. Autism is a public health crisis – regardless of what you attribute the rise to, there is absolutely no doubt that the numbers are increasing and if we do not act now to help children now, our state will never be able to support these children in the future. Harvard University recently published a study which found that it will take about 3.2 million dollars to take care of each individual person with Autism throughout their life. This is in today's dollars and the studies authors acknowledged that their estimate was a conservative one, if we do not act now to foster the skills and provide the interventions necessary to achieve independence for many of these individuals, our society will never be able to care for the vast numbers coming up the line. The tide is rising and though it may, initially, cost more to provide the needed services, it will prove to be both an enormous economic savings in the future, not to mention the achievement of the moral imperative of providing a quality of life for these wonderful children who really do have much so potential and abilities to contribute .

I am almost reluctant to say this because I do not want this misconstrued or utilized as a rationale for not providing services, as my oldest accomplished so much only because she received the services she desperately needed. However, as I stated at the beginning, my oldest child just graduated from High School. Although she was not the first child to apply to Yale University, she was the first child in our school district to ever be accepted. Consequently, at the end of this summer, I will be sending my daughter, a special education student, to Yale University as the first student in our district ever to achieve this. She did so, not because of Frisco ISD, but in spite of FISD. Although my oldest does not have Autism, she does have numerous and difficult challenges that she worked hard to overcome or accommodate. As a result of her own determination and the support she received from a school overseas, she was able to attain a level of success we never would have imagined in elementary school or middle school. These children are capable of so much, please take strong action to insure that they can all achieve success. They all may not achieve the same level of success as my oldest, but they are all capable of so much progress and it is our obligation to see that they are afforded the Free and Appropriate Public Education they are entitled to under Federal Law.

Other items not addressed in my oral testimony but are worthy of addressing:

1. Tying school performance ratings to complaints lodged and how well they are doing with respect to special populations.
2. Heavy punitive consequences for loosing at due process etc...or not providing adequate services.

3. Highly Qualified Teachers and Paraprofessionals – need vastly more training, higher standards, and higher pay.
4. Ratios – other states like New Jersey, provide legal minimal ratios for children with Autism. School districts are not even applying NAEYC ratio's for typically developing children. In fact, my district touts a preschool for employee children that complies with NAEYC ratios, yet they will not apply these same ratios to their children in PPCD!
5. Transition training should begin early – in elementary school. It takes time to develop community relationships, develop splinter skills or talents and this should start to occur as early as possible and applying ingenuity and creativity so that many of our children can play in a band or orchestra (great for leisure skills, development of social skills, and ultimately independent living) if they were provided lessons early on rather than being taught to fold pizza boxes. I am aware of one school out of state who took a child's propensity for order and lining things up and taught that child wallpaper hanging – independent skill. We need to start early and develop real interests and talents and not lower our expectations.
6. Continuum's of alternative placements need to be developed. Resource is not a placement, but a service and all too often that is where our children end up – a placement that has transitions every twenty minutes with no meaningful opportunities to develop relationships since children are continually coming in and out. So many problems with this...
7. Evaluations – need to make sure they are done timely and that IEP's are based on the results. My son when he was 2.5 already was diagnosed with Autism and stroke, my school district was aware of this, yet they did not conduct their own evaluations into these areas until he was well over three.
8. Continuity of services from ECI to School District's is vital. Many parent's are successfully obtaining better services through ECI – like ABA, developmental services, OT, PT etc...but these are being eliminated once they enter the district.